RIGHT BASE TRADING SDN BHD v. PREMIUM PARK DEVELOPMENT SDN BHD & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
AZIMAH OMAR JCA
AHMAD KAMAL MD SHAHID JCA
[CIVIL APPEAL NOS: J-02(NCvC)(W)-373-03-2024
& J-02(NCvC)(W)-313-02-2024]
21 OCTOBER 2025

Abstract – *There must be definite finality in respect of all parties' legal position and rights upon the conclusion of a compulsory acquisition. It is equally undesirable to allow the parties to remain in limbo and be allowed free rein to deal with lands under compulsory acquisition in the interim before the acquired land(s) are finally vested upon the State Authority. Neither the previous landowner nor the previous tenant should maintain a modicum of power over the acquired lands especially when the State Authority has already taken physical possession of the acquired lands. The previous landowner should not have been able to claim for 'residual' authority to impose rent and the tenant equally should not be allowed to continue its access or use of the acquired lands for free and at its whims and fancies.*

LAND LAW: *Acquisition of land – Compulsory acquisition – Land compulsorily acquired during subsistence of tenancy agreement – Whether rendered tenancy agreement terminated – Whether landlord maintained proprietary interest during interim period of acquisition process – Whether proprietorship only vested upon State Authority as and when land administrator endorses Form K onto register document of title – Whether tenant ought to be allowed access onto rented lots until Form K endorsed – Whether landlord could claim for trespass – Whether access by tenant in due abidance of consent order – Land Acquisition Act 1960, ss. 23 and 66*

LANDLORD AND TENANT: *Agreement – Termination – Tenancy agreement between parties – Claim for overdue rental – Land compulsorily acquired during subsistence of tenancy agreement – Whether rendered tenancy agreement terminated – Whether parties agreed to termination – Whether landlord entitled to overdue rental – Whether landlord entitled to cause of action for trespass*

On 4 July 2010, Kang Har Holdings Sdn Bhd ('KHHSB') and Right Base Trading Sdn Bhd ('defendant/tenant') entered into a tenancy agreement ('TA') wherein KHHSB agreed to let and the defendant agreed to rent: (i) the access road which ran across the two lots; and (ii) the unidentifiable land (which was supposed to be situated somewhere unidentifiable within

A one of the two lots) for two years, beginning 1 July 2010 and to end on 30 June 2012. The TA was verbally extended twice with the tenancy period to end on 30 June 2014. However, short from the expiration date of the new tenancy period, the Government, on 29 August 2013, had gazetted its declaration of intent to acquire the two lots *via* Form D and subsequently, B commenced the formal process of compulsory acquisition. The defendant therefore issued a notice of termination to KHHSB and in turn, KHSB issued a letter to accept the termination of the TA. The defendant's subsequent attempt to 'retract' its notice of termination was rejected. The defendant, thereafter, *via* its letter, *inter alia*, put on record that the plaintiff no longer C had any *locus standi* over the two lots due to the ongoing acquisition of the two lots, and offered to continue to pay rent to KHHSB until the two lots were fully vested unto the Government. In the midst of the correspondences between the parties, and unbeknownst to the defendant, KHHSB sold the two lots to the plaintiff and hence, by 12 March 2014, the plaintiff became the new subsequent proprietor of the two lots. In order to bar the defendant from D trespassing into the two lots, the plaintiff carried out digging works on the access road which led to an application by the defendant for a prohibitory order ('OS 92'). The defendant successfully obtained an interim injunction to prohibit the plaintiff from restricting access to the access road until the disposal of OS 92. Subsequently, KHHSB and the defendant recorded a E consent order within OS 92 ('consent order'), *inter alia*, that: (i) KHHSB be substituted with the plaintiff; (ii) the previous interim injunction be set aside; and (iii) the plaintiff shall not restrain the defendant access into the access road until the land administrator's ('LA') formal acquisition of the access road. Subsequently, the LA took formal possession of both the access road F and the unidentifiable land *vide* the issuance of Form K. Three years later, the plaintiff issued a notice of demand against the respondent citing that the defendant had continuously failed to deliver vacant possession of the rented lots for the period between 12 March 2014 to 11 September 2017. The defendant refuted the plaintiff's claim and highlighted the issuance of Form G D and Form K which ought to cause the plaintiff to lose any proprietary interest (save and except for compensation) over the rented lots. In view of the defendant's dispute, the plaintiff commenced the action before the High Court claiming for alleged outstanding rent and, alternatively, for damages for alleged trespass of the rented lots. The Judicial Commissioner ('JC') allowed the plaintiff's claim in part and hence, the two appeals herein, H Appeal 313 and Appeal 373. The issues for the court's determination in these appeals were whether the JC was correct: (i) to find that the plaintiff was not entitled to a cause of action under the TA for alleged overdue rental; (ii) to find that the plaintiff was entitled to a cause of action for trespass only up to the issuance of Form K; (iii) to allow the plaintiff's alternative claim for I trespass specifically over the access road; and (iv) to dismiss the plaintiff's alternative claim for trespass specifically over the unidentifiable land.

Held (dismissing Appeal 313; allowing Appeal 373)
Per Azimah Omar JCA delivering the judgment of the court:

(1) The operation of cl. 6 of the TA itself would have automatically determined the TA in view of the commencement of the compulsory acquisition. The plaintiff had unequivocally agreed to the termination of the TA at the first instance of the defendant's notice of termination. And, for all the instances the defendant had attempted to retract its termination, the plaintiff had consistently insisted on the finality of the termination of the TA. Thus, it would only be just and proper that the plaintiff be estopped from enforcing the TA which the plaintiff itself had vehemently insisted on terminating. Issue (i) was thus answered in the positive, in that, the JC was correct to find that the plaintiff was not entitled to a cause of action under the TA for alleged overdue rental against the defendant. (paras 22-24)

(2) The divesting and vesting of rights upon compulsory acquisition is governed specifically by s. 66 (read together with s. 23) of the Land Acquisition Act 1960 ('LAA'). The plaintiff retained proprietary interest over the two lots until the proprietary right over the two lots were vested unto the State Authority. The literal and statutory stipulations of ss. 23 and 66 of the LAA immutably prescribe that the plaintiff's proprietorship only vested upon the State Authority as and when the LA accordingly endorses the Form K onto the register document of title. So long as the LA did not endorse the Form K onto the register document of title, the plaintiff retained proprietary interest to claim for trespass over the access road and the unidentifiable land. Accordingly, issue (ii) was answered in the negative. Nevertheless, the answer under this heading did not necessarily or automatically support the plaintiff's claim for trespass. (paras 29 & 31-33)

(3) The term used in the consent order was 'pengambilan formal' or in other words 'formal acquisition', which is not exactly 'formal possession' as prescribed under s. 48 of the LAA. Nor was the context of OS 92 revolved around the LA's responsibility to pay late payment charges under s. 48 of the LAA. It does not lie upon any party to unilaterally 'suspend' or 'deem' a court order to be unenforceable. It must be pronounced by the court. Until and unless the plaintiff successfully moved the court to set aside or vary the consent order, the plaintiff could not fault the defendant for continuing its use or access upon the rented lots in due abidance and enforcement of the mutually agreed consent order. Issue (iii) was accordingly answered in the negative. The JC erred in allowing the plaintiff's alternative claim for trespass specifically over the access road. (paras 36-40)

(4) The operation of the consent order rendered the issue academic and moot. Even if the plaintiff were able to conclusively prove the exact location of the unidentifiable land and prove that the defendant had indeed accessed and used the unidentifiable land, the plaintiff still could not mount an action of trespass considering the defendant's access on the rented lots were clothed with legal justification courtesy of the consent order. Without the benefit of an independent survey plan of the relevant lots, it was difficult to accurately pinpoint the exact location and boundary of the unidentifiable land, what more to identify if the defendant had indeed occupied the unidentifiable land. Hence, issue (iv) was answered in the positive. The JC was correct to dismiss the plaintiff's alternative claim for trespass specifically over the unidentifiable land. (paras 41-43)

Obiter

(1) As a general rule, it is undesirable for the Land Office to disregard its own practice and circular and unduly delay the endorsement of Form K onto the register document of title. There must be definite finality in respect of all parties' legal position and rights upon the conclusion of a compulsory acquisition. It is equally undesirable to allow the parties to remain in limbo and be allowed free rein to deal with lands under compulsory acquisition in the interim before the acquired land(s) are finally vested upon the State Authority. By right, neither the previous landowner nor the previous tenant should maintain a modicum of power over the acquired lands especially when the State Authority has already taken physical possession of the acquired lands. The plaintiff (as the previous landowner) should not have been able to claim for 'residual' authority to impose rent and the defendant (as tenant) equally should not be allowed to continue its access or use of the acquired lands for free and at its whims and fancies. (para 44)

(2) The irrefutable fact remained that had the LA timeously endorsed Form K onto the register document of title, the plaintiff would have been divested off of its proprietary rights over the two lots much earlier and the defendant would have to appropriately refer to the State Authority to ventilate its intent to continue using and accessing the rented lots. On the same note, if it had not been the operation of the consent order, the defendant would have been in trespass of the rented lots. Nonetheless, neither the Land Office nor the State Authority was a party in the appeals and thus, it does not lie before the court to issue consequential orders or further directions to the State Authority or the Land Office regarding the 'incomplete' state of the compulsory acquisition of the two lots. On the contrary, it remained within the scope of the two appeals for the court to direct or order either or both the

plaintiff or the defendant to duly communicate with the Land Office so as to ensure that this state of 'limbo' shall cease and the acquired lands be finally and completely vested upon the State Authority under ss. 23 and 66 of the LA. (para 45)

Case(s) referred to:

Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat [2021] 3 CLJ 1 FC ***(dist)***

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(refd)***

Cheah Theam Kheng v. City Centre Sdn Bhd (In Liquidation) & Other Appeals [2012] 2 CLJ 16 CA ***(refd)***

China Airlines Ltd. v. Maltran Air Corp Sdn Bhd & Another Appeal [1996] 3 CLJ 163 FC ***(refd)***

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2015] 2 CLJ 453 FC ***(refd)***

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

Golden Star & Ors v. Ling Peek Hoe & Ors [2021] 3 CLJ 443 FC ***(refd)***

Ho Yau Hong & Ors v. How Yaw Ming & Another Appeal [2023] CLJU 827; [2023] 1 LNS 827 CA ***(refd)***

Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor [2014] 7 CLJ 882 CA ***(not foll)***

Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC ***(refd)***

United Allied Empire Sdn Bhd v. Pengarah Tanah Dan Galian Selangor & Ors [2017] 8 CLJ 173 CA ***(foll)***

Vila Mekar Sdn Bhd v. Wong Yie Dee [2025] CLJU 1703 CA ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 10(1), 23, 48, 66

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For the defendant - Shanker Sivapragasam & Siti Hasmah Osman; M/s K Siladass & Partners

[Editor's note: For the High Court judgment, please see Premium Park Development Sdn Bhd v. Right Base Trading Sdn Bhd [2024] CLJU 352 (overruled in part).]

Reported by S Barathi

JUDGMENT

Azimah Omar JCA:

Introduction

[1] The two appeals before us were filed against the learned Judicial Commissioner's ("learned JC") decision to only partly allow the plaintiff – proprietor's claim for alleged unpaid rental (and alternatively for trespass) against the defendant-tenant in the curious midst of the two subject lands so rented being compulsorily acquired by the State Authority.

[2] The two subject lands here involve a clearly mutually demarcated access road cutting across two plots of lands owned by the plaintiff ("access road") as well as an 'unidentified' three acres' portion of one of the two plots of land owned by the plaintiff ("unidentifiable land") (collectively referred to as "the rented lots").

[3] Appeal 313 was the plaintiff's appeal against the learned JC's decision to dismiss the plaintiff's claim for alleged rent arrears for both rented lots (and alternatively against the learned JC's decision dismissing the plaintiff's claim for trespass specifically upon the unidentifiable land).

[4] Meanwhile, Appeal 373 was the defendant's appeal against the learned JC's decision to allow the plaintiff's claim against the defendant for trespassing the access road in the interim when the acquisition was first commenced until the time the access road was appropriately vested unto the State Authority.

[5] In essence, the plaintiff was dissatisfied with the portion of its claim that the learned JC had partly dismissed while the defendant was dissatisfied with the portion of the plaintiff's claim that the learned JC had partly allowed.

[6] In any case, it is only apt for us to first appreciate and lay down the factual matrix that had culminated the appeals before us. Since both parties are the appellant and respondent in each other's appeals, it is only practical that we refer to the parties in their original capacities as the plaintiff and defendant in the High Court below so as to avoid unnecessary confusion.

Factual Background

[7] Premium Park Development Sdn Bhd ("the plaintiff/PPDSB") was the subsequent owner of two plots of land held under HSD 18771 Lot PT 567 ("Lot 567") and HSD 18772 Lot PT 568 ("Lot 568") which were adjacent to one another (collectively "the two lots"). Both Lots 567 and 568 were previously owned by Kang Har Holdings Sdn Bhd ("KHHSB").

[8] PPDSB and KHHSB were interrelated companies. On 4 July 2010 (when the two lots were still owned by KHHSB), KHHSB and Rightbase Trading Sdn Bhd ("the defendant/the tenant") entered into a tenancy agreement in which KHHSB agreed to let and the defendant agreed to rent; (i) the access road which ran across both the two lots and; (ii) the unidentifiable land (which was supposed to be situated somewhere unidentifiable within one of the two lots) for a RM10,000 monthly rental for two years beginning 1 July 2010 and ends 30 June 2012 ("tenancy agreement"). Relevant to the appeals before us, the tenancy agreement:

(i) did not explicitly or specifically apportion the lump sum RM10,000 monthly rent between the corresponding access road and the unidentifiable land;

(ii) did not explicitly apportion and demarcate the boundary and location of the unidentifiable land atop of one of the plaintiff's two lots;

(iii) only roughly 'understood' the boundary and location of the access road running across the two lots in order for the defendant to be able to access its office building which was situated in Lot 11481 (which was adjacent to Lot 567);

(iv) was not appended with any clear plan to expressly identify and demarcate the boundary and location of both the access road and the unidentifiable land;

(v) stipulated that the tenancy agreement immediately ceases upon the commencement of a compulsory acquisition by the Government (cl. 6 of the tenancy agreement); and

(vi) stipulated that the tenancy agreement also binds any successors in title or permitted assigns of both the plaintiff and defendant.

[9] Upon the expiration of the tenancy period, the tenancy agreement was verbally extended twice. Upon the second extension, the rental was raised to RM15,000 a month and the tenancy period was extended to 30 June 2014. However, short from the expiration date of the new tenancy period, the Government on 29 August 2013 had gazetted its declaration of intent to acquire the two lots *via* Form D dated 31 July 2013. By 4 October 2013, the Government's intent in Form D was informed to the public at large by the issuance of Form E. Upon the issuance and service of Form D, the process of compulsory acquisition had formally commenced (see s. 10(1) of the Land Acquisition Act 1960; Federal Court in *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861; [2016] 1 MLJ 544). Thus in actuality, by the operation of cl. 6 of the tenancy agreement, the tenancy agreement supposedly had already ceased at this juncture. Echoing this supposed termination, the defendant-tenant *via* its solicitors had issued a notice of termination dated 11 February 2014 to KHHSB's solicitors (therefore further solidifying the ceasing of the tenancy agreement) in view of the impending acquisition of KHHSB's two lots. KHHSB in turn *via* its solicitor had issued a letter dated 27 February 2014 to accept the defendant's termination of the tenancy agreement.

[10] However, past the point of unconscionable ceasing (or termination) of the tenancy agreement, the defendant (which the learned JC surmised to have realised that the acquisition will take a long time) then attempted to salvage the original terms of the tenancy agreement by 'retracting' the defendant's notice of termination *via* its solicitors' letter dated 6 March 2014. In response, KHHSB (*via* its solicitors' letter dated 10 March 2014) intimated to the defendant that KHHSB had already accepted the defendant's termination and thus proceeded to request that the defendant return the

vacant possession of both the access road and the unidentifiable land by 11 March 2014. In another futile attempt to salvage the tenancy agreement, the defendant yet again issued another letter dated 12 March 2014 (*via* its solicitor) to retract the defendant's notice of termination (which was again rejected by the plaintiff on 13 March 2014). In turn, the defendant's solicitor sent a reply letter dated 14 March 2014 to, *inter alia*, putting on record that the plaintiff no longer has any *locus standi* over the two lots due to the ongoing acquisition of the two lots. Notwithstanding, the defendant still offers to continue to pay rent to KHHSB until the two lots were fully vested unto the Government.

[11] In the midst of the parties' correspondence regarding the termination of the tenancy agreement, and unbeknownst to the defendant, KHHSB had sold the two lots to the plaintiff *via* a sale and purchase agreement dated 15 October 2013. By 12 March 2014, the plaintiff became the new subsequent proprietor of the two lots.

[12] We have to emphasise from the outset that the issue whether or not the tenancy agreement would accordingly be succeeded from KHHSB to the plaintiff is moot and a non-issue as the operation of cl. 6 of the tenancy agreement would have already cemented the ceasing and termination of the tenancy agreement in view of the commencement of the compulsory acquisition (on top of the defendant's own notice of termination and the KHHSB's acceptance of the defendant's termination).

[13] Since the defendant remained reluctant to relinquish vacant possession of the access road and the unidentifiable land (despite the clear termination of the tenancy agreement), the plaintiff had no other recourse but to carry out digging works on the access road so as to bar the defendant from trespassing into the plaintiff's two lots (in the interim before the two lots were fully vested back to the Government).

[14] Disgruntled by the disruption of access, the defendant proceeded (together with an inter-related company, Super Piles Sdn Bhd) commenced Originating Summons No. 24NCVC-92-03/2014 ("OS 92") seeking for a prohibitory order to restrain KHHSB from denying the defendant access unto the access road.

[15] On 17 March 2013, the defendant was able to obtain an *ex parte* interim injunction to prohibit the plaintiff from restricting access to the access road until the disposal of OS 92 ("interim injunction"). The interim injunction was granted upon the court's consideration of the defendant's undertaking as to damages. In the midst of OS 92, the Land Office on 14 May 2014 proceeded to issue Form H (notice of award and offer for compensation). Just a month afterwards on 15 June 2014, KHHSB and the defendant recorded a consent order within OS 92 ("consent order") in which, *inter alia*:

(i) it was mutually agreed that KHHSB be substituted with the plaintiff (as the current proprietor of the two lots at the time); A

(ii) it was mutually agreed that the previous interim injunction be set aside; and

(iii) it was mutually agreed that the plaintiff shall not restrain the defendant access into the access road until the Land Administrator's formal acquisition of the access road ("sehingga pengambilan formal jalan akses di tanah-tanah tersebut oleh Pentadbir Tanah Daerah Batu Pahat"). B

[16] About four months subsequent to the entry of the consent order, the Land Administrator effectively took formal possession (not yet vesting of rights) of both the access road and the unidentifiable land *vide* the issuance of Form K (Notis Pemberitahu Bahawa Tanah Telah Diambil Milik) dated 25 September 2014. C

[17] Post the issuance of Form K (and after three years of silence), the plaintiff suddenly issued a notice of demand dated 21 September 2017 against the plaintiff citing that the defendant had continuously failed to deliver vacant possession of the rented lots for the period between 12 March 2014 to 11 September 2017. D

[18] Unsurprisingly the defendant *via* its solicitor had issued a reply letter dated 10 October 2017 refuting the plaintiff's claim and highlighted the issuance of Form D and Form K which ought to cause the plaintiff to lose any proprietary interest (save and except for compensation) over the rented lots. In view of the defendant's dispute, the plaintiff commenced the action before the High Court claiming for alleged outstanding rent and alternatively for damages for alleged trespass of the rented lots. E F

The High Court's Decision

[19] Upon full trial, the learned JC ultimately only partially allowed the plaintiff's claim (specifically for trespass of the access road) while dismissing a majority of the plaintiff's claim for overdue rent and alternatively trespass of the unidentifiable land on the following grounds: G

(i) the plaintiff is not entitled to any cause of action in breach of the tenancy agreement as the parties have already mutually agreed to the termination of the tenancy agreement in view of the impending compulsory acquisition. In fact, the operation of cl. 6 of the tenancy agreement would have automatically terminated the tenancy agreement the moment the compulsory acquisition commenced *via* the issuance of Form D (even before the mutual termination was agreed upon by both parties). Thus, even if there is any continued use of the rented lots by the defendant (post the commencement of the acquisition), the only recourse available to the plaintiff (in the interim before the full completion of the acquisition and vesting of rights) was for trespass; H I

(ii) the plaintiff (although entitled to claim for trespass) was not entitled to claim for trespass for the entire period from 12 March 2014 to 11 September 2017. At best, the plaintiff can only claim for trespass from the period of 12 March 2014 (the time where the defendant failed to deliver vacant possession upon request) until the time the Land Administrator took "formal possession" the two lots *vide* the issuance of Form K (on 25 September 2014) ("interim period"); and

(iii) since the plaintiff had failed to tender cogent evidence and a survey plan to appropriately prove the boundary and location of the unidentifiable land, the learned JC was unable to conclusively identify that the defendant indeed had continued to trespass onto the unidentifiable land during the interim period. Thus, the plaintiff's claim for trespass of the unidentifiable land was dismissed.

[20] Both parties being dissatisfied with the learned JC's decision had filed the two appeals before us (Appeal 313 and Appeal 373).

The Appeals Before Us

[21] We have perused the memorandums of appeal, the High Court's grounds of judgment, the records of appeal and the parties' respective written submissions and we are of the view that the two appeals before us can be decided by determining the following issues:

(i) issue 1: whether the learned JC was correct to find that the plaintiff was not entitled to a cause of action under the tenancy agreement for alleged overdue rental;

(ii) issue 2: whether the learned JC was correct to find that the plaintiff was entitled to a cause of action for trespass only up to the issuance of Form K;

(iii) issue 3: whether the learned JC was correct to allow the plaintiff's alternative claim for trespass specifically over the access road; and

(iv) issue 4: whether the learned JC was correct to dismiss the plaintiff's alternative claim for trespass specifically over the unidentifiable land.

Issue 1: Whether The Learned JC Was Correct To Find That The Plaintiff Was Not Entitled To A Cause Of Action Under The Tenancy Agreement For Alleged Overdue Rental

[22] We do not have any hesitation to find that we agree with the learned JC's finding over the full and final termination of the tenancy agreement ever since the Land Administrator's issuance of Form D (which formally commences the compulsory acquisition process). It was apt for the learned JC to appreciate that the operation of cl. 6 of the tenancy agreement itself would have automatically determined the tenancy agreement in view of the commencement of the compulsory acquisition:

6. Acquisition By The Government

If at any time during the continuance of this Tenancy the Malaysian Government or State Government shall **acquire the said Land under the provisions of the Land Acquisition Act, 1960** or the Local Authority shall condemn the said Land as a dangerous structure or for other reasons and the said Land is required to be pulled down or the Local Authority shall make a demolition order which shall become operative in respect of the said Land or any part thereof or a closing order in respect of a part of the said Land or a clearance order affecting the whole or any part of the said Land or a clearance order affecting the whole or any part thereof or if by reason of any other order made pursuant to statute or statutory instrument the Tenant shall be permanently prevented from using the Land for any purposes permitted under the terms of this Agreement and **the Tenancy hereby created shall cease in relation to the land acquired as from the commencement of such acquisition** or the pulling down of the said Land or from the time when such demolition or closing thereof shall become operative and all deposits paid herein shall be refundable to the Tenant provided there are no outstanding tenancy rental.

(emphasis added)

[23] Furthermore, it would be unjust for the court to allow the plaintiff to shift its stance on the termination of the tenancy agreement willy-nilly. The factum remains that the plaintiff had already unequivocally agreed to the termination of the tenancy agreement at the first instance of the defendant's notice of termination. And for all the instances the defendant had attempted to retract its termination, the plaintiff had consistently insisted on the finality of the termination of the tenancy agreement. Thus, it would only be just and proper that the plaintiff be estopped from enforcing the tenancy agreement which the plaintiff itself had vehemently insisted on terminating (see *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283; [1995] 3 MLJ 331; *Cheah Theam Kheng v. City Centre Sdn Bhd (In Liquidation) & Other Appeals* [2012] 2 CLJ 16; *Vila Mekar Sdn Bhd v. Wong Yie Dee* [2025] CLJU 1703; [2025] MLJU 2104; *Ho Yau Hong & Ors v. How Yaw Ming & Another Appeal* [2023] CLJU 827; [2023] 1 LNS 827; [2023] MLJU 933).

[24] The above considered under this heading, we accordingly answer issue 1 in the positive. The learned JC was indeed correct to find that the plaintiff was not entitled to a cause of action under the tenancy agreement for alleged overdue rental against the defendant.

Issue 2: Whether The Learned JC Was Correct To Find That The Plaintiff Was Entitled To A Cause Of Action For Trespass Only Up To The Issuance Of Form K

[25] Perhaps the pinnacle issue that would make or break the plaintiff's alternative claim for trespass is the parties' respective legal positions post the termination of the tenancy agreement and prior to the full completion of the compulsory acquisition. Subsequent to the termination of the tenancy agreement, a cause of action for trespass would arise if:

(i) the plaintiff still maintains a proprietary interest over the two lots during the interim period during the process of acquisition (before the completion of the acquisition and vesting of rights unto the State Authority); and

(ii) the defendant still accesses either the access road and/or the unidentifiable land during the interim period during the process of acquisition (before the completion of the acquisition and vesting of rights unto the State Authority).

[26] Considering the pertinence of the plaintiff maintaining a proprietary interest, the parties proceeded to submit case laws as to their respective contention on the time in which the plaintiff effectively be divested from its proprietorship and the State Authority effectively be vested with proprietorship over the two lots:

(i) in reliance to the recent Federal Court decision in *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1; [2021] 4 MLJ 1 and the Court of Appeal decision in *Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor* [2014] 7 CLJ 882; [2015] 2 MLJ 126, the defendant submits that proprietorship transfers from the plaintiff to the State Authority immediately after the issuance of Form K on 25 September 2014. A submission which we have identified to be squarely contrary to the statutory stipulation of ss. 23 and 66 of the Land Acquisition Act 1960; and

(i) on the other hand, the plaintiff contended that by the literal operation of ss. 23 and 66 of the Land Acquisition Act 1960, proprietorship over the two lots are divested not as early as the issuance of Form K, but instead upon the endorsement, registration or memorialising of the Form K into the register document of title. The plaintiff relies upon the statutory effect of ss. 23 and 66 of the Land Acquisition Act 1960, as well as the Court of Appeal decision in *United Allied Empire Sdn Bhd v. Pengarah Tanah Dan Galian Selangor & Ors* [2017] 8 CLJ 173; [2018] 1 MLJ 661.

[27] The learned JC ultimately agreed with the defendant citing the fact that the High Court is 'bound' to follow the decision of the apex court (being the Federal Court decision in *Amitabha Guha* and the Court of Appeal decision in *Ishmael Lim*. We have critically perused the Federal Court's decision in *Amitabha Guha* and accordingly have identified that the entire discourse of "formal possession" within *Amitabha Guha* was entirely irrelevant and distinguishable from the appeals before us. This is because "formal possession" in *Amitabha Guha* was discussed in the utility of s. 48 of the Land Acquisition Act 1960 which only deals with the Land Administrator's responsibility to pay late payment charges in instances where the court has awarded compensation which was greater than the initial

compensation paid by the Land Administrator (calculable "from the date on which the Land Administrator took possession of the land to the date of payment of such excess ..."). The provision had nothing to do whatsoever as to the time and manner in which proprietary rights is divested from the previous owner and vested unto the State Authority:

s 4 and 5 - Meaning of 'possession' issue:

Whether for the purpose of computation of late payment charges under s. 32 of the LAA 1960, the phrase 'taking possession of the land' in s. 32(1C) of the LAA 1960 means taking physical possession of the land or taking formal possession of the land under s. 22 of the LAA;

Whether for the purpose of computation of late payment charges under s. 48 of the LAA 1960, the phrase 'taking possession of the land' in s. 48 of the LAA 1960 means taking physical possession of the land or taking formal possession of the land under s. 22 of the LAA 1960.

(emphasis added)

[28] The Federal Court had not at all mentioned ss. 23 and 66 of the Land Acquisition Act 1960 and the Federal Court did not have to do so considering the case in *Amitabha Guha* had nothing to do with any issue as to the divesting and vesting of proprietary rights over an acquired land.

[29] Instead, the divesting and vesting of rights upon compulsory acquisition is governed specifically by s. 66 (read together with s. 23) of the Land Acquisition Act 1960. These two provisions read:

Entry in register

23. The proper registering authority, *upon receipt of the notice in Form K, or the Land Administrator of his own motion alter completing Form K*, shall, *upon the register document of title* or other appropriate record in his possession as specified in subsection 9(2) or (3), *make* with respect to any scheduled land a *memorial*:

(a) *that the whole of such land has been acquired and has vested in the State Authority* or, in the case of a parcel of a subdivided building, in the person or corporation on whose behalf the parcel has been acquired; or

(b) that so much of the land as is specified in the last column of the schedule to such Form has been acquired.

...

66. Upon the making of a memorial under section 23 in respect of any scheduled land, *the land shall vest in the State Authority* as State land or, in the case of a parcel of a subdivided building, in the person or corporation on whose behalf the parcel was acquired, free from incumbrances.

(emphasis added)

[30] We are not inclined to follow the decision in *Ishmael Lim* for the fact that the Court of Appeal in *Ishmael Lim* had only referred to s. 23 of the Land Acquisition Act 1960 without due consideration of the deeming provision of s. 66 of the Land Acquisition Act 1960. Instead, we are inclined to follow the complete and holistic reasoning of the Court of Appeal in *United Allied Empire* which squarely discussed the divesting and vesting of rights upon a compulsory acquisition with appropriate reference and consideration to s. 66 of the Land Acquisition Act 1960 as well as the Land Office's own circular No. 27/2009 which explicitly stipulated that no title is divested and vested until Form K is appropriately endorsed onto the register document title:

> [22] As regards the issue on Form K, *we were also in agreement with the appellant's contention that such mere issuance of Form K, without the required endorsement of the memorial under ss. 23 and 66 of the LAA 1960, would not be sufficient, in order to effectively or conclusively vest the title of the said land to the state authority*. The position that was taken by the learned JC had been that the title of the acquired land would vest in the state authority the moment the Form K was issued. She had relied on the decision of this court in the case of *Ishmael Lim bin Abdullah @ Lim Keng Chew v. Pesuruhjaya Tanah Persekutuan & Anor* [2014] 7 CLJ 882; [2015] 2 MLJ 126 ('the *Ishmael Lim* case') to support that proposition.
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> ...
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> [25] *We noted, with respect, that the panel of this court in the Ishmael Lim case did not refer to s. 66 of the LAA 1960*. Section 66 provides for the vesting of the title in the said land to the state authority thereby effectively reverting the acquired land as state land. *It was noted too by us that this court in the Ishmael Lim case did not consider the Pekeliling Ketua Pengarah Tanah dan Galian Persekutuan Bilangan 27/2009* which reaffirms effectively the position that *before an endorsement or memorial of Form K is made on the issue document of title of the land, no title shall be vested in the state authority* in respect to the said acquired land. We noted that the said circular was issued by the Director General of Lands and Mines with the consent of all State Directors, and that of the Attorney-General's Chambers, to that effect, which was in consonance with the wordings of s. 66 of the LAA 1960 ...
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> ...
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> To our minds, the nett effect of *this failure to observe the statutory requirements of ss. 23 and 66 of the LAA 1960 and of its own Circular 27/2009 must necessarily be that the said land has not vested in the state authority although Form K may have been issued and gazetted*. As such, the appellant was still competent to stake and pursue its challenge against the purported acquisition of said land.
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> (emphasis added)

[31] The above considered, we are partially in agreement with the learned JC specifically on the finding that the plaintiff retains proprietary interest over the two lots until the proprietary right over the two lots are vested unto the State Authority.

[32] Nonetheless we are not in agreement with the learned JC's conclusion that the plaintiff's proprietary rights were vested upon the State Authority as early as the issuance of Form K. Instead, we are of the mind that the literal and statutory stipulations of ss. 23 and 66 of the Land Acquisition Act 1960 immutably prescribe that the plaintiff's proprietorship only vests upon the State Authority as and when the Land Administrator accordingly endorses the Form K onto the register document title. Therefore, as a base finding, the learned JC was in error in finding that the interim period lapses as early as the issuance of Form K. Thus, so long as the Land Administrator did not endorse the Form K onto the Register document title, the plaintiff also retains proprietary interest to claim for trespass over the access road and the unidentifiable land.

[33] The above considered under this heading, we accordingly answer issue 2 in the negative. The learned JC had unfortunately erred in finding that the plaintiff was entitled to a cause of action for trespass only up to the issuance of Form K. Instead, we find that the plaintiff may plea for a cause of action of trespass so long as the Land Administrator had not endorsed Form K onto the register document title. To decide otherwise would fly in the face of established statutory rule as well as the Land Office's own circular. Although we have to highlight that our answer under this heading does not necessarily or automatically supports the plaintiff's claim for trespass.

Issue 3: Whether The Learned JC Was Correct To Allow The Plaintiff's Alternative Claim For Trespass Specifically Over The Access Road

[34] Notwithstanding our finding in the heading prior, we are aware and are minded that there still stands the valid and subsisting consent order (within OS 92) in which would:

(i) allow the defendant access unto the rented lots until the 'formal acquisition' (not formal possession alike in *Amitabha Guha*) of the rented lots by the Land Administrator of the District of Batu Pahat; and

(ii) restrain the plaintiff from causing any restriction against the defendant from accessing the rented lots until the 'formal acquisition' (not formal possession alike in Amitabha Guha) of the rented lots by the Land Administrator of the District of Batu Pahat.

[35] For clarity's sake the terms of the consent order are reproduced here *ad verbatim*:

> Maka Adalah Pada Hari Ini Diperintahkan bahawa:
>
> (e) Premium Park Development Sdn Bhd, pekerja-pekerjanya, ejen ejennya dan/atau sesiapa berkenaan dengan Premium Park Development Sdn Bhd dihalang dan/atau bertindak dan/atau membuat perkara-perkara

A yang menghalang dan/atau melarang Plaintif-Plaintif atau pekerja-pekerjanya, ejen ejennya dan/atau sesiapa berkenaan dengan Plaintif-Plaintif daripada melalui dan/atau keluar masuk dan/atau menggunakan jalan akses yang terletak di HSD 18771 PT567 dan HSD 18772 PT568 Mukim Minyak Beku, Daerah batu Pahat **sehingga pengambilan formal jalan akses di tanah-tanah tersebut oleh Pentadbir Tanah Daerah Batu Pahat**;

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(f) Premium Park Development Sdn Bhd, pekerja-pekerjanya, ejen-ejennya dan/atau sesiapa berkenaan dengan Premium Park Development Sdn Bhd dihalang daripada bertindak secara mencanggah kepada tujuan yang dinyatakan di Borang D yang telah diwartakan pada 31.07.2013 oleh Pentadbir Tanah Daerah Batu Pahat.

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(emphasis added)

[36] The term used in the consent order was "pengambilan formal" or in other words "formal acquisition". Formal acquisition is not exactly "formal possession" as prescribed under s. 48 of the Land Acquisition Act 1960 (alike in the case of *Amitabha Guha*). Nor was the context of OS 92 revolved around the Land Administrator's responsibility to pay late payment charges under s. 48 of the Land Acquisition Act. Instead, in the proper context of OS 92, the entirety of OS 92 was a purpose – designed to restrict the plaintiff's exercise of its proprietary interest over the two lots to deny the defendant access onto the two rented lots in the interim period before the plaintiff is divested from its proprietary rights over the two lots. Thus, ss. 23 and 66 of the Land Acquisition Act 1960 becomes exceedingly relevant and applicable in the due abidance and adherence to the consent order as it revolves around the plaintiff's proprietary rights over the two lots in the interim before the compulsory acquisition is concluded.

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[37] The aforementioned considered, it is plain to see and appreciate that the consent order remains enforceable up to the point the plaintiff no longer maintains a proprietary right over the two lots (as by that time the plaintiff no longer has the authority as proprietor to restrict or allow access onto the two lots against the defendant). Considering the operation of ss. 23 and 66 of the Land Acquisition Act 1960, the consent order must necessarily be enforceable to allow the defendant access onto the rented lots until which time the plaintiff's proprietary interest over the two lots are vested onto the State Authority (being the time in which the Land Administrator duly memorialise Form K onto the register document title).

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[38] Considering the above, until and unless the consent order is set aside, it remains incumbent upon the plaintiff to allow access and for the defendant to be granted access onto the rented lots until the Land Administrator endorses Form K onto the register document title. It is trite law that even an irregular order of the court cannot be ignored even on the honest belief of nullity until which time the court was moved to either set aside or vary the court order. It does not lie upon any party to unilaterally 'suspend' or

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'deem' a court order to be unenforceable. It must be pronounced by the court. This principle had been recently restated by the Federal Court in the case of *Golden Star & Ors v. Ling Peek Hoe & Ors* [2021] 3 CLJ 443; [2021] 2 MLJ 259:

> [61] In *TO Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151, it was held by this court that 'An *order even irregularly obtained cannot be treated as a nullity*, but must be implicitly obeyed, until by proper application it is discharged'. Lee Hun Hoe (Borneo) CJ in TO Thomas explicitly emphasised that contempt of court arises when there is wilful disobedience of an injunction:
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> > When an injunction has been made against a person appellant cannot aid and abet that person to flout it for that will be in contempt. That person can appear in court and contest the injunction by asking the court to vacate it. Contempt of court arises on the wilful disobedience of the injunction whether it is made with or without jurisdiction. *The question whether 'the court order' has been suspended or modified is a matter for the court to decide when its properly before the court. This is not a matter for appellant to arbitrarily so construe*. Where a plaintiff has proved his right to an injunction against a nuisance or other injury, it is no part of the duty of the court to inquire in what way the defendant can best remove it ... In dealing with the contention that the original order had been erroneously granted in *Fennings v. Humphrey* [1841] 4 Beav 1; 49 ER 237. Lord Langdale MR said:
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> > > It is clear, that a party who is served with an order may be guilty of contempt for disobedience, in a case in which the order ought not to have been made. *He is not to determine for himself, but ought to come to the court for relief, if advised that the order is invalid*.
> >
> > (emphasis added)

[39] Thus, until and unless the plaintiff successfully moves the court to set aside or vary the consent order, the plaintiff cannot fault the defendant for continuing its use or access upon the rented lots in due abidance and enforcement of the mutually agreed consent order. Therefore, despite the plaintiff maintaining its proprietary interest over the two lots, the plaintiff's cause of action for trespass is stymied (and ought not undermine) the operation of the consent order. Thus, there cannot be a case for trespass when the defendant's continued access (if any) into the rented lots (inclusive of the access road) was legitimate as per the operation of the consent order. In fact, we certainly appreciate the defendant's full and frank disclosure within the defendant's written submission that the defendant's continued access onto the rented lots would have amounted to a trespass if not for the subsistence of the mutually agreed consent order:

A Without the abovesaid Court Orders, the defendant's continued use of the said access road could amount to a trespass as the said tenancy agreement was terminated and duly accepted by the landlord (Kang Hai). However, once the defendant was clothed with the abovesaid Court Orders, it is humbly submitted that the defendant cannot be faulted or held culpable for trespass.

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[40] Considering all of the aforementioned deliberation under this heading, we accordingly answer issue 3 in the negative. The learned JC had unfortunately erred in allowing the plaintiff's alternative claim for trespass specifically over the access road.

C *Issue 4: Whether The Learned JC Was Correct To Dismiss The Plaintiff's Alternative Claim For Trespass Specifically Over The Unidentifiable Land*

[41] Considering our negative answer in issue 3 prior, it only logically flows that we must answer issue 4 in the positive in that the learned JC was indeed correct to dismiss the plaintiff's alternative claim for trespass
D specifically over the unidentifiable land. In the same manner that the consent order would allow the defendant to access the access road in the interim period until the Land Administrator duly memorialise the Form K into the register document title, the consent order would also legitimise the defendant's access onto the unidentifiable land (if any) throughout the same
E interim period.

[42] We will not delve in depth into the learned JC's evidential analysis and appreciation of evidence into the disputed location of the unidentifiable land as the operation of the consent order renders the issue to be academic and moot. Even if the plaintiff were able to conclusively prove the exact
F location of the unidentifiable land and prove that the defendant had indeed accessed and used the unidentifiable land, the plaintiff still could not mount an action of trespass considering the defendant's access on the rented lots were clothed with legal justification courtesy of the consent order. In any case, we have perused the learned JC's grounds of judgment into this issue
G and found that the learned JC had meticulously considered the location plan (exh. D2) as well as the parties' respective witnesses' testimony in reference to exh. D2 as well as photographs in relation to exh. D2.

[43] For completeness, we are in agreement with the learned JC that without the benefit of an independent survey plan of the relevant lots, it was
H difficult to accurately pinpoint the exact location and boundary of the unidentifiable land, what more to identify if the defendant had indeed occupied the unidentifiable land. There was nothing plainly or inherently wrong in the learned JC's analysis to warrant an appellate intervention so as

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to re-examine the learned JC's analysis of facts and evidence. (see *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1; *China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal* [1996] 3 CLJ 163; [1996] 2 MLJ 517; *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2015] 2 CLJ 453; [2015] 2 MLJ 441).

Obiter Dicta

[44] As an aside, it is crucial that we emphasise that our decision here is strictly in view of the niche facts and circumstances of the appeals before us. As a general rule, it is undesirable for the Land Office to disregard its own practice and circular and unduly delay the endorsement of Form K onto the register document title. There must be definite finality in respect of all parties' legal position and rights upon the conclusion of a compulsory acquisition. It is equally undesirable to allow the parties to remain in limbo and be allowed free rein to deal with lands under compulsory acquisition in the interim before the acquired land(s) are finally vested upon the State Authority. By right, neither the previous landowner nor the previous tenant should maintain a modicum of power over the acquired lands especially when the State Authority has already taken physical possession of the acquired lands. The plaintiff (as the previous landowner) should not have been able to claim for 'residual' authority to impose rent and the defendant (as tenant) equally should not be allowed to continue its access or use of the acquired lands for free and at its whims and fancies.

[45] The irrefutable fact remains that had the Land Administrator timeously endorsed the Form K onto the register document title, the plaintiff would have been divested off of its proprietary rights over the two lots much earlier and the defendant would have to appropriately refer to the State Authority to ventilate its intent to continue using and accessing the rented lots. On the same note, if it had not been the operation of the consent order, the defendant (as admitted by the defendant itself) would have been in trespass of the rented lots. Nonetheless, neither the Land Office nor the State Authority is a party in the appeals before us and thus it does not lie before us to issue consequential orders or further directions to the State Authority or the Land Office regarding the 'incomplete' state of the compulsory acquisition of the two lots. On the contrary, it remains within the scope of the two appeals before us for us to direct or order either or both the plaintiff or defendant, to duly communicate with the Land Office so as to ensure that this state of 'limbo' shall cease and the acquired lands be finally and completely be vested upon the State Authority under ss. 23 and 66 of the Land Acquisition Act 1960.

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Our Decision

[46] Regarding the plaintiff's Appeal No. 313, all of the above deliberations considered, we find that, on the balance of probabilities that there are no merits in Appeal 313. Thus, we hereby dismiss Appeal 313. Therefore, the learned JC's decision to dismiss the plaintiff's claims for rent under the tenancy agreement is hereby maintained.

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[47] Regarding the defendant's Appeal No. 373, all of the above deliberations considered, we find that, on the balance of probabilities that there are merits in Appeal 373. Thus, we hereby allow Appeal 373. Therefore, the learned JC's decision to allow the plaintiff's alternative claims for trespass of the access road is hereby set aside.

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[48] Parties to bear their own costs considering both parties have either been equally ignorant or unaware of the mechanism of ss. 23 and 66 of the Land Acquisitions Act 1960 and had failed to promptly refer the matter with the Land Office so as to enable a swift and prompt regularisation or remedy of the interim 'limbo'. On the part of the plaintiff, the plaintiff had merely blissfully ridden on the Land Administrator's delay in endorsing the Form K onto the register document title while the defendant had merely blissfully ridden on the operation of the consent order.

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